

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9916 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

PATEL VINSHNUBHAI KESHAVALAL

Versus

SPECIAL LAND ACQUISITION OFFICER NO.1

Appearance:

MR JV JAPEE for Petitioners

Mr. M.R.Raval, A.G.P. for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 01/02/99

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. M.R.Raval, learned A.G.P. waives

service of notice of rule on behalf of the respondent. At the joint request of learned advocates appearing for the parties, the petition is taken-up for final hearing today.

By means of filing this petition under Article 226 of the Constitution of India, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, order or direction to set aside and quash order dated June 11, 1998 passed by the Special Land Acquisition Officer, Mehsana by which application dated November 14, 1995 filed by the petitioners requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of compensation is rejected on the ground that the said application is time barred.

2. The petitioners were owners of agricultural lands bearing survey no.1099/9, 1099/7 and 1099/6 situated at village Rajpur, Taluka : Kadi, District : Mehsana. Those lands were acquired for the public purpose of construction of road after following the provisions of the Land Acquisition Act, 1894 ("the Act" for short). The Special Land Acquisition Officer had made award on September 2, 1995. According to the petitioners, no notice as contemplated by section 12(2) of the said Act was served on any of the petitioners and the petitioners came to know about the award on October 4, 1995 only when the Deputy Collector had come to the village for the purpose of making payment. The petitioners have claimed that they filed application dated November 14, 1995 requiring Special Land Acquisition Officer, Mehsana to refer the matter to the Court for determination of compensation. That application is produced by the petitioners at Annexure-A to the petition. The said application is rejected by the respondent by order dated June 11, 1998 on the ground that the application was filed beyond time prescribed by section 18 of the said Act. The said order is produced at Annexure-B to the petition. According to the petitioners, no notice was served under section 12(2) of the said Act and the application filed by the petitioners could not have been treated as time barred. Under the circumstances, the petitioners have filed present petition and claimed relief to which reference is made earlier.

3. On notice being served, Mr. P.R.Rana, Special Land Acquisition Officer (1), Mehsana has filed affidavit-in-reply controverting the averments made in the petition. In the reply, it is claimed that the award was made on September 2, 1995 and the interested persons

were informed by notices as contemplated under section 12(2) of the Land Acquisition Act. It is further mentioned therein that notices were served on the occupiers/owners calling upon them to remain present on September 18, 1995 at 2.00 p.m. for collecting the payment of compensation and their signatures were also obtained. What is claimed in the reply is that some owners/occupiers refused to receive notices issued under section 12(2) of the Act and, therefore, copies of notices were pasted on the door of their residential premises and, therefore, it is not true to say that no notices were served under section 12(2) of the Act. By filing reply, the deponent has demanded dismissal of the petition.

4. Petitioner No.1 has filed affidavit-in-rejoinder on behalf of the petitioners and produced relevant data to indicate that the petitioners were owners of survey Nos. 1099/9, 1099/7 & 1099/6 of village Rajpur, but no notice under section 12(2) of the Act was served on any of them. Mr. J.V.Japee, learned Counsel for the petitioners submitted that no notices under section 12(2) of the Act were served on the petitioners and, therefore, the application filed by the petitioners requiring the Special Land Acquisition Officer, Mehsana to refer the matter to the Court for determination of compensation could not have been treated as time barred in view of the provisions of Section 18(2)(b) of the Act, as the petitioners were entitled to file such application within six months from the date of award of the Special Land Acquisition Officer.

5. Mr. H.L.Jani, learned Counsel for the respondent contended that notice as contemplated by section 12(2) of the Act was served on Girdharlal Prabhudas, who was shown as owner of Survey no.1099 in the revenue record and, therefore, the petition should be dismissed.

6. Heard the learned Counsel for the parties. From the impugned order, it is evident that the application filed by the petitioners requiring the Special Land Acquisition Officer, Mehsana to refer the matter to the Court for determination of compensation is rejected on the ground that the application was time barred. The learned Counsel for the petitioner has produced certified copies of the Entries from record of rights (hakk patrak) maintained in Village Form No. 6. Entry No. 7685, dated November 15, 1989 would indicate that on the death of Keshavlal Kalida Patel, land bearing Survey No.1099/6 of village Rajpur had devolved on his heirs and the petitioner No.1 i.e. Patel Vishnubhai Keshavlal had

inherited the same. Similarly, Entry No.6688 dated November 15, 1985 shows that Survey No. 1099/9 was inherited by petitioner no.3 i.e. Patel Bhikhabhai Laldas. Yet, another Entry No. 6676 shows that survey No.1099/7 was inherited by petitioner no.2 i.e. Ms. Rukhiben Mathurbhai Patel. The entries produced are ordered to be taken on record of the case. The correctness of the record produced by the learned Counsel for the petitioners is not controverted by Mr.Rana, Spl.Land Acquisition Officer(1), Mehsana, who is personally present in the Court. It is true that the respondent had served notice under section 12(2) of the Act on Girdharlal Prabhudas, but original Survey No.1099 of village Rajpur was divided into several parts and each part was owned by different persons. If the revenue record had been taken into consideration by the respondent, he would have immediately realised that the petitioners were owners of parts of Survey No.1099 acquired by the State Government and were entitled to receive notice under section 12(2) of the Act. Admittedly, no notices have been served on any of the petitioners under section 12(2) of the Act and, therefore, they would be entitled to file application requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation within six months from the date of award of the Special Land Acquisition Officer. The application dated November 14, 1995 could not have been treated as time barred when the award was made by the Special Land Acquisition Officer on September 2, 1995. Under the circumstances, the petition deserves to be accepted.

For the foregoing reasons, the petition succeeds. The order dated June 11, 1998 produced by the petitioners at Annexure-B to the petition is hereby set aside and quashed. The respondent is hereby directed to take appropriate action under section 18 of the Land Acquisition Act, 1894 pursuant to application dated November 14, 1995 filed by the petitioners. The respondent shall take appropriate action in the matter as early as possible and preferably within four weeks from today. Rule is made absolute, with no order as to costs.

(patel)